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The Solicitors' Journal

VOL. LXXVIII. **Saturday, September 15, 1934.** No. 37

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Current Topics.

The City Sheriffs.

THE late F. W. MAITLAND, whose too early death robbed the law of one of its most brilliant exponents, said in one of his earliest books that "the whole history of English justice and police might be brought under this rubric 'The Decline and Fall of the Sheriff.'" In Norman times, as he pointed out, the sheriff was little less than a viceroy; the shire was let to him at a rent and he made what he could out of the administration; but for centuries he had lost, first, this function, and then that, so that now we know him as a country gentleman who, much against his will, has been endowed for a single year with high rank and burdened with a curious collection of disconnected duties. Among the sheriffs, however, those chosen for the City of London stand apart from their confrères in the counties. They are selected, not in the Lord Chief Justice's court on 12th November, but by the City liverymen on 24th June, nor have they quite the same functions as the sheriffs for the counties. Again, as we are reminded by a paragraph in *The Times*, they have to be formally admitted to office, which this year will be on 28th September, and, thereafter, their first official duty will be to conduct the election of the Lord Mayor at the Guildhall on 29th September. According to a French writer, whose volume on the whole of our judicial system is a masterly work, despite occasional little slips, the functions of the City sheriffs consist largely in escorting the Lord Mayor, in sharing in the numerous ceremonies which take place in the City, including many banquets, "some of which are given at their expense." The same writer adds that the sheriffs are selected from City men sufficiently rich to afford the necessary expense, and who are ambitious of reaching the highest post the City can confer—a very laudable ambition.

Archaic Ceremonies.

EVERY student of legal history is familiar with the commanding place held in early times by forms and ceremonies in the ordinary transactions of life. As Sir HENRY MAINE put it, "an ancient conveyance was not written, but acted. Gestures and words took the place of written phraseology; any formula mispronounced, or symbolical act omitted, would have vitiated the proceedings as fatally as a material mistake in stating the uses or setting out the remainders would, two hundred years ago, have vitiated an English deed." Much of this was at least picturesque, as when, for example, on the sale of land the parties either went on to, or came within sight of, the property in question, and the seller delivered to the purchaser a symbol of corporeal delivery, such as a twig or clod of earth. The ancient learning with regard to investiture by these and similar ceremonies has recently been revivified for us in the admirable translation from the pen of the Lord President of the Court of Session of the classic "Jus Feudale" of Sir THOMAS CRAIG, the distinguished historical lawyer of sixteenth century Scotland—a translation made for the first time from the original Latin text. CRAIG loved the feudal rites and wrote about them with a fulness of detail betokening the intensity of his interest in them. Many curious facts are scattered through his work, all pointing to the addiction in old days to ceremonies as the accompaniments of juristic acts. Thus, he recalls that in ancient Rome when a husband brought home his bride he handed her a bunch of keys as a token of the committal to her care of the administration of his household. To take away the keys from her was a sign of divorce. Again, when a child was emancipated or a slave manumitted, it was the custom formally to box them on the ears. Sir THOMAS then adds a personal recollection of having seen this ceremony performed in Germany on the occasion of the liberation of a bondsman. The idea of inflicting a blow, more or less violent, to signalise some event appears not to have been unknown in connection with the old ceremony of beating the bounds; certainly in some parishes boys were "bumped" to impress upon their memory the transaction in which they were humble, and it may be pained, participants. GOETHE, in his "Aus meinem Leben," mentions a similar practice obtaining in his youth in Germany. Most of these old customs have now disappeared, the old order having changed yielding place to new; but it is interesting to recall them and the place they long held in the daily life of our ancestors.

Debenture Interest and Income Tax.

THE question whether debenture interest and similar payments are to be regarded as having been met "wholly out of profits or gains brought into charge to tax" within the meaning of r. 19 of the All Schedules Rules of the Income Tax Act, 1918, or whether they are "not payable, or not wholly payable out of profits or gains brought into charge"—or, in other words, whether a company is entitled to retain the amount deducted for tax or must account for it to the Commissioners of Inland Revenue—is not infrequently a source of difficulty. The relevant principles are set out in the judgments delivered in the case of *Birmingham Corporation* v. *Inland Revenue Commissioners* [1930] A.C. 307, which went to the House of Lords. In another recent case, *Luipaard's Vlei Estate and Gold Mining Co Ltd.* v. *Commissioners of Inland Revenue*

[1930] 1 K.B. 593, the argument that r. 19 was applicable on the ground that debenture interest had been met out of a sum originally standing to the credit of the profit and loss account and subsequently written off against capital depreciation was not acceded to, the company having made no profits in the years of charge. The most recent case in which this question has been considered is that of *Central London Railway* v. *Inland Revenue Commissioners* (78 SOL. J. 585). The railway company raised £850,000 under powers given by an Act of 1930, which, by s. 124, provided that all moneys so raised were to be applicable only to the purposes to which capital was properly applicable. Under s. 118 of the same Act, which provided that the company could charge to capital account the interest accruing on the debenture stock, the company so charged part of the interest, which was assessed accordingly as being paid out of money not brought into charge to tax. FINLAY, J., reversed the decision of the Commissioners that the interest must be treated as paid out of capital in accordance with the statutory account on the ground that the interest was paid out of the general banking account of the company and that as the subject must be taken to make the best use of his money to avoid unnecessary taxation, the payment must be taken to have been made out of profits brought into charge. The Court of Appeal rejected this proposition as applicable to the present case. The company for good business reasons had charged part of the interest to capital in order to leave a larger sum available for dividend. Rule 21 was therefore held to apply to this part of the interest. Lord HANWORTH, M.R., noted in the course of his judgment that no account keeping by a debtor could alter the rights of the Crown: *Attorney-General* v. *London County Council*, 4 T.C. 265, 301.

Tax on Premium Value of Shares.

IN the recent case of *Weight* (*Inspector of Taxes*) v. *Salmon* (78 SOL. J. 617), the question was raised whether a managing director was assessable to income tax in respect of the premium value of shares which he was privileged to take up at par in return for "eminent and special services." He had on various occasions taken the shares but he did not sell any of them. In *Tennant* v. *Smith* [1892] A.C. 150, it was held that in estimating a bank agent's total income for all sources the annual value of his privilege of free residence on the bank premises could not be brought into account. He was bound to occupy the premises as custodian and for the transaction of any special bank business after bank hours, and bound to quit them on relinquishment of office. In considering the agent's liability to tax under Sched. E of the Income Tax Act, 1842, Lord WATSON said it was not doubtful that the appellant was liable to pay tax in respect of all "salaries, fees, wages, perquisites, or profits whatsoever" accruing to him by reason of his office. The benefit of residence was clearly neither salary, fee, nor wages. Was it a perquisite or profit? "I do not think," the learned Lord said, "it comes within the category of profits, because that word, in its ordinary acceptation, appears to me to denote some thing acquired which the acquirer becomes possessed of and can dispose of to his advantage—in other words, money—or that which can be turned to pecuniary account." The fourth rule of Sched. E of the Act then in force prevented the benefit under consideration being a perquisite—these being defined as "such profits of offices and employments as arise from fees and other emoluments, and *payable* either by the Crown or by the subject in the course of executing such offices or employments." Under the present Act perquisites "shall be deemed to be such profits as arise in the course of exercising an office or employment from fees or other emoluments." FINLAY, J., in *Weight* (*Inspector of Taxes*) v. *Salmon*, held that the premium value of the shares was assessable on the ground that the privilege of taking them up was given in respect of services rendered in "exercising an office or employment of profit" within Sched. E, r. 1, of the Income Tax Act, 1918, notwithstanding the director's contention that he had received a non-transferable privilege which was not money. This decision was upheld by the Court of Appeal, Lord HANWORTH, M.R., intimating that, although there was no immediate profit at the time when the privilege of applying for the shares was given, the director by any ordinary test had enjoyed a profit from the constant and successive allotments of the shares.

New Town and Country Planning Compensation Rules.

THE Reference Committee for England and Wales under the Acquisition of Land (Assessment of Compensation) Act, 1919, have issued a new set of Rules for the determination of claims in respect of compensation and betterment under the Act as extended by s. 23 of the Town and Country Planning Act, 1932. These Rules (1934, No. 778, L. 21) supersede the Town Planning Compensation Rules, 1926, and provide a schedule of forms to be used in connection with claims made under the Act of 1932 and amend the Acquisition of Land Rules of 1919 for purposes of town and country planning compensation. The time for applying for an arbitrator to be selected will in future be any time after the expiration of fourteen days from the date on which the claim was made, or (if the claim is made under s. 21 (1) of the Act) after twenty-eight days from date of service of claim. Rule 7 of the 1919 Rules is also varied for purposes of the Act of 1932 so that, where different persons are interested in the same property, the Reference Committee may appoint the same person to hear and determine all the claims. In view of the large number of claims now arising under the Act of 1932 it is important that these new Rules should not be overlooked.

Tolpuddle.

THE recent centenary celebrations at Tolpuddle bring to mind the bad old days when combinations to regulate relations between masters and masters, masters and workmen, and workmen and workmen were regarded as illegal, contrary to public policy and conspiracies in restraint of trade. Much water has flowed under the bridges since the six Dorchester labourers were convicted of the administration of unlawful oaths and sentenced to transportation. It was partly as a consequence of their conviction that the then apparently grandiose Grand National Consolidated Trades Union, with its claim of half a million membership, fell to pieces. To-day, however, the Trades Unions boast a membership of over three millions and possess a definite legal status. All strikes, excluding the strictly limited number of the character made illegal by s. 1 of the Trades Disputes Act, 1927, are now legal. Inducing breaches of contract and interference with trade for the purposes of a trade dispute are not *per se* actionable, nor can any acts in combination between two or more persons for the purposes of trade disputes be made actionable if they are not actionable when done without combination: Trades Disputes Act, 1906, ss. 1 and 3. Peaceful negotiations as well as strikes have done much to ameliorate the lot of the worker, and Trades Unions have also concerned themselves with the provision of benefits for members. One of the most notable of these is that of affording legal assistance in the conduct of workmen's compensation cases, and in that respect they have rendered a signal service to the people whom they represent, as every practitioner in the county courts well knows. Few of the many Court of Appeal and House of Lords decisions on the complicated questions of interpretation of the Workmen's Compensation Acts could have been carried so far without the assistance of Trades Union funds, and it is now generally admitted that the ability of a wealthy litigant to appeal to a further tribunal sometimes amounts to a denial of justice to his poorer adversary. The fact that in the face of mountainous obstacles the Trade Union movement in Great Britain has reached an almost unassailable position is due to the efforts of men like the Tolpuddle martyrs.

The Order of Application of Assets.

II.

THE cases which have so far been decided on Sched. I, Pt. II, of the Administration of Estates Act, have all, with the exception of *In re Littlewood* [1931] 1 Ch. 443, dealt with the question: What is a sufficient direction to exonerate a lapsed gift from bearing the whole burden of debts? In *In re Lamb* [1929] 1 Ch. 722, Eve, J., held that a direction to pay debts as soon as possible followed by specific and pecuniary and residuary legacies, did not exclude the operation of the schedule so as to free a lapsed share of residue from its *prima facie* burden. That judgment also laid down the principle re-affirmed, after inexplicable vacillations, in *In re Tong* [1931] 1 Ch. 202, that a lapsed share of residue is property undisposed of by will.

In *In re Petty* [1929] 1 Ch. 726, there was a disposition of residuary real and personal property on trust for sale and conversion and out of the proceeds to pay debts and legacies and to stand possessed of the residue on trust to divide into two equal parts, of which one lapsed. Astbury, J., distinguished *In re Lamb* on the ground that the will in his case created a "mixed fund," while in the earlier case there was a mere charge of debts. It is not easy to see what the creation of a mixed fund had to do with the matter. The effect of s. 32 of the Administration of Estates Act is to relegate the whole lore of mixed funds to lie with Jeremy Taylor's rose (or, perhaps, more suitably, Swift's broomstick) "in the portion of weeds and outworn faces." "In these circumstances," the judge said, "the estate must be administered according to the testator's directions, and the expenses and debts are not thrown primarily on the lapsed moiety." It is true that they are not so thrown by the testator; for he never knew that there would be a lapsed moiety on which to throw them and so, it is submitted, failed to give any direction which would take the case out of the schedule.

By the will in *In re Atkinson* [1930] 1 Ch. 47, the testator made a general devise of all his real property and then bequeathed his personal property on trust for sale and conversion and to pay out of the money so produced debts, etc., legacies and residuary gifts. The devise failed. The essential part of the judgment is contained in one sentence. "Here the will contains a clear direction to the trustees to convert the personal estate and out of the moneys produced by such conversion to pay the funeral and testamentary expenses and debts; until that provision is worked out there is no necessity to have recourse to Part II of the First Schedule to the Act." But it might equally well have been said that the will contained a clear direction to convey the real property to the devisee and precisely because it was impossible to work out that direction, it became necessary to resort to the Schedule. One does not have resort to the Schedule only if there is nothing to exclude it. *Primâ facie* the Schedule applies to all wills unless it is shown affirmatively that the testator has varied the order.

In *In re Kempthorne* [1930] 1 Ch. 268, the question was more elaborately discussed. There the will was in the form, after a specific devise of the testator's freehold property, "As to my [personal property] subject to and after payment of my funeral and testamentary expenses and debts and . . . legacies . . . the same shall be divided into seven equal parts and I bequeath the same as follows." Of the seven parts three lapsed. Maugham, J., after pointing out that the intention of the Act was plainly to alter the old law to the detriment of people entitled on an intestacy and that, instead of ascertaining the residue by first paying debts, etc., and then ascertaining what is to happen to the shares that are left, the lapsed shares and residue must now be treated as primarily applicable for the payment of these liabilities, went on to show that the position of the third and fourth paragraphs in the Schedule proves that something more than even a specific appropriation or a charge of debts would be required to vary the order of the Schedule so as to exonerate property undisposed of. He suggested, without however asserting it, that the words in the will, "subject to and after" might amount to a charge of debts on the personal property, in which case (though he did not put it precisely in that way) these words so far from effecting a variation of the Schedule would merely serve to fix the place of the personal property so charged after the property undisposed of. It is obvious from the passage which followed that the nerve of the argument was not the possibility of there being a charge in this particular will but the general structure of the Schedule. The property with which he was dealing being "property undisposed of by the will," must be treated in the manner prescribed by the Schedule. He held, therefore, that the liabilities must be discharged out of the shares of residue undisposed of.

The Court of Appeal must have had before them a text of the judgment of Mr. Justice Maugham differing materially from that which appears at page 276 of the Law Reports. Thus, the Master of the Rolls says at p. 295: "Maugham, J., finds the terms (of the will) explicit in regard to the legacies. He holds that they clearly indicated that the payment of the legacies is to be completed before the divisible fund is created; and he holds that the terms of the act do not apply, because the fund is not ascertained until after payment of the legacies. It is clear therefore, that upon the question of legacies the learned judge attached importance to the word "after" as indicating the point of time at which the fund is to be ascertained." There is nothing in the printed judgment of Maugham, J., to which this is remotely relevant unless it be the two quotations from the words of the Schedule which appear there. At least the word "legacies" occurs in them, while the only other place in the judgment where the word "legacies" occurs is clearly not in point. Further all three judges seem to have had before them a judgment the sole ground for which was the presence of a charge in the will such as is described in para. 4 of the Schedule, which would necessarily exonerate property subject to it, as against property undisposed of. Not finding such a charge the Court of Appeal disagreed with the judgment.

Thus, for example, Russell, L.J., said: "In my opinion, however, the learned judge erred in treating the provision made by this testator as being a disposition of property as described in para. 4 of Pt. II of Sched. I. Neither para. 3 nor para. 4 can apply or be intended to apply to a disposition of a general or residuary nature; because the operation of the Schedule is such that resort is not to be had to the items covered by paras. 3 and 4, until all property of the deceased comprised in a residuary gift is exhausted. Thus, the reason which impelled Maugham, J., to decide as he did had as I construe the Schedule no foundation in fact."

Not only does this argumentation appear to be wide of the mark as a criticism of the judgment of the lower court, but it appears to be open to considerable doubt as an interpretation of the particular will and of the Schedule. It is to be remembered that there was in the will a devise of property not included in the clause which was the immediate subject of interpretation. On the principle "*expressio unius est exclusio alterius*" there was a clear exoneration of that property from the payment of debts and legacies, which necessarily, as we have seen, involves a charge on the remainder. It is true that by the operation of the Law of Property Act the property devised fell in the event into the category of personal property, but apart from that fact the will offers as good an example as it is possible to conceive of property bequeathed by general description subject to a charge of debts. It must have been *per incuriam* that Russell, L.J., said that para. 4 could not apply to a disposition of a general nature. The words in the paragraph "bequeathed by a general description" must have some meaning. Further the argument that property falling under para. 2 cannot fall under para. 4 proves too much. Precisely the same argument would prove that a

devise charged with debts could not be a specific devise. There is nothing in the words of the schedule to prevent a gift being qualified under two paragraphs, though it will naturally be liable under the first qualification which appears in the Schedule, and this is the view expressed in the most recent edition of "Williams on Executors," at p. 111.

The only other argument is that of the Master of the Rolls, that the divisible fund is only ascertained or only "comes into being" after the payment of debts and legacies. The latter phrase is, of course, merely metaphorical, and the whole argument, though it has been regularly repeated since *Eyre* v. *Marsden*, 4 My. & Cr. 231, seems to express no more than the fact that the mechanical operations of calculation must, in the absence of a power to see things *sub specie aeternitatis*, be performed in some temporal order or other. A simple example will show that it does not matter in what order the operations are performed. Testator after providing for specific legacies leaves in all £15,000. His debts are £5,000, he gives pecuniary legacies amounting to £1,000, and he bequeaths the residue in three equal shares of which one lapses. As, in the absence of a specific variance under para. 8, a residuary share can only be distributed "subject to and after" payment of debts and pecuniary legacies it makes no apparent difference whether the testator uses these words or not. And as the funds for the payment of debts and pecuniary legacies are to be constituted out of the residuary gift (s. 34 (3) and para. 2) the simplest procedure is to divide the whole £15,000 at once into three shares of £5,000 of which one lapses. From that share we set aside £1,000 for pecuniary legacies. The remaining £4,000 goes in debts, leaving the other two shares to find, under para. 2, £500 apiece. If we feel that we must give effect to the word "after," we may begin by deducting the debts and legacies, but the result is still the same. Thus: £15,000 — (£1,000 + £5,000) = £9,000, so that the share which lapses is £3,000. But in the absence of any words exonerating it from the payment of debts, etc., that share is primarily liable for all the debts and pecuniary legacies, so it must repay to the other two shares as far as it will extend the £2,000 apiece which they have contributed to these purposes, and in the result these again get £4,500. Once it is admitted as it is by the Master of the Rolls in *In re Tong*, that a lapsed share of residue is primarily liable for the payment of debts, the whole argument about the way in which the share is to be ascertained becomes meaningless. It will be observed that the method suggested above is in conformity with the most recent decision, that in *In re Worthington* [1933], Ch. 771.

It is submitted that the judgment of the lower court was correct, and that to constitute a variance from the order of the schedule there must be a definite recognition of the contingency that some property may be undisposed of; or a provision under paras. 3 or 4 with a clause of exoneration wide enough to cover such property. Something of the kind seems to be contemplated in the words of Romer, L.J., in *In re Tong*: "Even if the testator had directed his executors to pay all his funeral and testamentary expenses and debts and then given the remainder of his estate on certain trusts I should still have hesitated to say that this amounted to an indication that the expenses and debts were to be paid in any other order than that provided by the first schedule," words which were emphatically approved in *In re Worthington*.

In *In re Littlewood* [1931] 1 Ch. 443, by a will executed before the coming into force of the Act of 1925, the testatrix gave certain personal property subject to a charge of debts and legacies and also made a residuary gift. Maugham, J., following some remarks of Clauson, J., in *In re Atkinson*, as to the interpretation of wills made before the new legislation and also purporting to follow the decision of the Court of Appeal in *In re Kempthorne*, held "that *primâ facie* the paragraphs of the schedule are to have effect subject to the provisions of the will of the deceased in cases where there is a reasonably clear indication of the intentions of the deceased and *à fortiori* . . . when the will was executed before the coming into force of the Administration of Estates Act of 1925," and accordingly decided that the residuary gift had been exempted. It is more easy to reconcile this decision with the probable intentions of the testatrix than to make it accord with the decision in *In re Kempthorne*. In that case all three judges of the Court of Appeal were quite definite on this point at least, that if they had been able to discover in the will such a charge of debts coming under para. 4 as indubitably was to be found in the will in *In re Littlewood* they would have given effect to the order of the Schedule. Moreover that will, like this, was a pre-Act will and the decision on the first of the two points raised on it—the effect of the devise of freeholds and copyholds—can only be accepted on the ground that Maugham, J., and the Court of Appeal were right in applying the terms of the Law of Property Act without regard to the interpretation which the deceased would certainly have put on his will could he have returned to interpret it. As the Master of the Rolls said ([1930] 1 Ch. 285): "We do not know and it is not right for us to speculate whether or not this testator had considered the effect of the recent legislation and decided to leave his will as it was." In other words, the court is concerned not with what the testator meant but with the meaning which the Act imputes to the words he used, and if he did not change his words to suit the Act so much the worse for his beneficiaries. From this point of view it is submitted the decision in *In re Littlewood* cannot be supported.

In the result we find that this small piece of workmanlike and perspicuous drafting has, except in *In re Lamb*, been treated as if it were one of Torquemada's worst crossword puzzles from *The Observer*, and the only other decision in consonance with the apparent policy of the Act has been reversed. The Acts of 1925 are still over-young for that process of judicial emasculation which has deprived so many promising legislative reforms of their hopes of a legitimate succession. As an interpretation of the probable intentions of testators the long series of cases to which Lawrence, L.J., referred in *In re Kempthorne* has no claim to imitation or admiration. Under the new law the next-of-kin are a more select and, possibly, more meritorious body than under the old; but it would be a pity if the decisions now criticised should prove to be the beginning of a new series in which the Courts of Chancery will lay hold of loose and general expressions to benefit them on occasions when they take not with but against the will of the testator. One would not wish to see, with the substitution of "next-of-kin" for "heir" any recrudescence of the doctrine expressed by Lord Hardwicke in *Galton* v. *Hancock*, 2 Atk., at p. 426: "All the cases prove an heir-at-law to be as much, if not more, a favourite in a court of equity than a devisee."

Company Law and Practice.

Letters of Allotment and Renunciation.

THE recent "City sensation" (*vide* the popular press) which was caused by the discovery of a number of forged allotment letters prompts me to offer a few general observations on the subject of letters of allotment and letters of renunciation; general, firstly because the details of that particular case are probably a fitter subject for contemplation by the criminal lawyer than for this column, and secondly because there is not much in the way of authority on the question of the precise legal position created by renunciation by allottees in favour of a third party.

I dealt comparatively recently with the contract to take shares, and it will be remembered that generally speaking an application for shares is construed as an offer which requires acceptance and notification of acceptance; the company's

acceptance is usually signified by a letter of allotment communicated to the applicant. The general rules of contract operate ; so that in the ordinary circumstances of an application for shares being made by post, communication of acceptance is deemed to be authorised by post, and with the posting of the letter of allotment the contract is complete whether or not it is actually received by the applicant. I do not propose to traverse this familiar ground again, but there are one or two additional points about allotment letters which are perhaps worthy of notice.

An allotment letter being an acceptance of an offer should be unconditional and should not introduce terms which differ from or are in addition to those contained in the prospectus or the application ; otherwise there is no completed contract between the parties, since the new term is construed as a new offer and requires further acceptance. So in *Re Leeds Banking Company : Addinell's Case*, L.R. 1 Eq. 225, the allotment letter contained a clause which made its appearance for the first time in the transaction to the effect that if the amount payable was not paid before a specified date the shares would be forfeited. It was held that a new term had been imported, and as nothing further took place to indicate acceptance of the shares with the superadded terms as to forfeiture, there was no contract constituted. This is of course only an example of the application of a general principle of the law of contract, which was well stated by Cotton, L.J., in *Hussey* v. *Horne-Payne*, L.R. & Ch.D. 670, at p. 678, in these words : " To make a contract by letter or by offer and acceptance what you must find is this, an offer and a simple unconditional acceptance, that is to say, an acceptance not introducing any new term. If a new term is introduced, it becomes no longer an acceptance but a new offer, which must be accepted before there is any contract." So if less than the number of shares applied for are allotted, there is no binding contract until they are accepted unless the application authorises a partial allotment : see *ex parte Roberts*, 1 Drew 204. It will be remembered that letters of allotment require to be stamped ; but an unstamped letter of allotment may be sufficient communication of acceptance to constitute the binding contract.

To pass now to letters of renunciation : these are often issued attached to letters of allotment, and enable the original allottee to renounce the shares allotted to him in favour of a third party who will sign a letter of acceptance of the shares renounced. By this means allotment letters are rendered in effect transferable documents of title to shares, and are, I believe (here I speak with some diffidence as I am not very familiar with the commercial practice), the subject of every-day transactions. But, so far as I know, they are not, any more than are share certificates, negotiable instruments, so that the transferee will get no better title than his transferor ; and even if they were negotiable instruments, this would not avail him if the letters of allotment were (to revert to my opening remarks) forgeries, subject, however, to any question of estoppel which might arise.

Let us see if we can work out the position of a person in whose favour the shares are renounced. By virtue of the allotment letter there is a completed contract between the company and the original allottee ; and the attached letter of renunciation amounts to an authority by the company to the original allottee to renounce in favour of the third party, and when such renunciation and the acceptance by the third party are complete and accepted by the company the original allottee drops out ; his name will not appear on the register of shareholders at all in respect of the shares. There has, in effect, been a transfer of the shares, but it is not a transfer in the strict sense of the term attracting *ad valorem* duty and subject to the provisions of the articles as to transfers. In *Re Pool Shipping Company Ltd.* [1920] 1 Ch. 251, bonus shares were being issued to the shareholders and appended to the letters of allotment were letters of renunciation and letters of acceptance, the latter to be signed by the person in whose favour the shares were renounced. Shares were renounced in favour of C, but when he presented the letters of renunciation in his favour and his own letters of acceptance and applied for the allotment of the shares to him, the directors refused to treat him as the person to whom the shares should be issued, purporting to act under an article which empowered them " in their absolute discretion and without assigning any reason therefor " to refuse to register any transfer of shares of which they did not approve. It was held by Peterson, J., that this renunciation was not a transfer within the meaning of the articles relating to the transfer of shares ; those articles related to the transfer of the shares of a registered holder and the transaction in question was not a transfer of shares standing in the name of anyone, but was the substitution of a nominee in the place of the person to whom in the first instance the shares were proposed to be allotted. He accordingly decided that C was entitled to be registered in respect of the shares.

If then renunciation is not strictly speaking a transfer of shares, when does the contractual relationship on which rights and liabilities depend arise between the company and a person in whose favour the shares are renounced ? We shall get some assistance in answering this question from the interesting case of *Collins* v. *Associated Greyhound Racecourses Ltd.* [1930] 1 Ch. 1. There shortly before the company was incorporated a draft prospectus afterwards adopted by the company was circulated for the purpose of obtaining underwriters. An investment company entered into an underwriting agreement by which they agreed to subscribe themselves or to get responsible persons to subscribe for shares. On 29th November M and O offered to underwrite 12,000 shares for the investment company and applied for the shares to the proposed company, enclosing a cheque. On 12th December the proposed company was incorporated and the underwriting agreement and the prospectus were adopted and the prospectus issued to the public. The public response was insufficient and 8,100 shares were allotted to M and O, the allotment letter bearing at the back a form of renunciation.

M & O were in fact the plaintiff's agents and he had provided the £600. They renounced the shares in his favour and he paid the further sum due on allotment and sent the allotment letter to the company, who replied stating it had been duly registered in his name and placed his name on the register of shareholders.

It was found as a fact that the plaintiff had relied on the draft prospectus, and that that prospectus contained an innocent misrepresentation ; and the plaintiff, on discovering the misrepresentation, brought the action for rectification of the register by the removal of his name and repayment of the money paid. It was held, firstly, that he could not sue as the undisclosed principal of the contract between M & O and the company (with that point we are not concerned), and secondly, that the contract constituted by the company's acceptance of the plaintiff's authority under the renunciation to place his name on the register could not be treated as a contract entered into on the basis of the draft prospectus ; hence he was not entitled to rescission.

It was not necessary to decide the precise nature and scope of the contractual relationship between the company and the plaintiff because it was held that, even assuming a contract, it was not a contract entered into on the basis of the draft prospectus. Luxmoore, J., at p. 20, says : " Can the plaintiff sue under the contract (if any) constituted by the acceptance by the defendant company of his authority to it, under the renunciation letter, to place his name on the share register ? . . . I assume that the putting on the register of the plaintiff's name in pursuance of the renunciation letter and the au hority signed by the plaintiff constitutes a contract." In the Court of Appeal, Lawrence, L.J., assumed that contract was constituted by the acceptance by the company of the renunciation

and nomination of the plaintiff and the latter's acceptance of such nomination, but thought there was a good deal to be said for the view that no contractual relationship arose till the plaintiff was placed on the register. Russell, L.J., also speaks of "a contract somehow constituted by the secretary having entered in the books of the company a receipt of a form of acceptance signed by the plaintiff." Lord Hanworth thought that the effect of renunciation was not that the contract between M & O and the company and its resultant rights passed to the plaintiff, but that it was the "fruit" of that contract, i.e., the shares which were assigned or renounced; and he added that "for the purpose of the *nexus* between the company and the plaintiff to whom the shares were renounced it does not seem to be vital to consider when the actual registration of the shares took place. It appears to me that there was a contract, it may be by novation."

As the question we are discussing was not necessary for decision, nor was it decided, it is not possible to speak with certainty, but I think it may be said that the contractual relationship between the company and a person in whose favour shares are renounced is constituted probably when the company indicates its acceptance of the nominee and almost certainly when he is placed on the register of shareholders. Irrespective of this, it is difficult to see how, as against the original allottee, the company could, in view of the authority it gives the allottee to renounce, refuse to register except for some very good reason the person in whose favour renunciation is made; and as *Re Pool Shipping Co.*, *supra*, shows, it cannot do so acting in reliance on an article giving the directors a discretion to refuse to register transfers. Future decisions may perhaps shed light on the whole position.

A Conveyancer's Diary.

The "Curtain" Provisions.

When the "New Law of Property Acts" were passed we heard a lot about the "curtain" provisions. It is true that the curtain has since become somewhat tattered—but it exists.

The trust for sale is one of the methods adopted to drop the curtain and in some respects the most important, but, of course, there are others, and all are set out with some particularity in s. 2 of the L.P.A., 1925.

That section provides that "a conveyance to a purchaser of a legal estate shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof if . . ." Then follows an enumeration of the cases in which that result may be achieved. I need not set them out in full but shortly, they are:—

(1) Where the conveyance is made under the powers conferred by the S.L.A. or additional powers conferred by the settlement "and the equitable interest or power is capable of being overreached thereby." The words which I have quoted under this sub-section are somewhat obscure. The exceptions may outrun the rule. Nevertheless, speaking generally, a conveyance of a legal estate by a tenant for life, or a person having the powers of a tenant for life, is a protection to a purchaser for value. There is nothing new in that, but it may be said that under the S.L.A. of 1882 there was what might more correctly be termed overreaching provisions A tenant for life or a person having the powers of a tenant for life under that Act could in fact overreach equitable interests. Having only a life estate, he could nevertheless convey the fee simple freed from equitable interests arising under the settlement. Now the tenant for life has the fee simple, so it is hardly strictly correct to speak of overreaching so far as he is concerned. It is, however, a convenient expression. I do not know that any advantage has accrued by vesting the fee simple in the tenant for life and inventing a new name "estate owner" for him, a name, however, which is seldom used in the S.L.A. He is still almost always spoken of as "the tenant for life." The name is, perhaps, not important, but it is strange that it should have been preserved.

(2) The next instance is where a conveyance is made by trustees for sale, and again "where the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees." The words "at the date of the conveyance" are inserted here, but do not appear in the former sub-section.

Settlements upon trust for sale are by far the most convenient and I think the most common. I look forward to the time when all settlements are made in that way. But the time is not yet. The most extensive powers are given to trustees for sale, including, of course, power to postpone a sale, although not expressly given by the settlement, and wide powers of management in the meantime. There must be two trustees to give a discharge for the purchase-money, although one may enter into a binding contract to sell. I think that is a mistake. If two are required to receive the purchase price, it seems illogical that one should have power to contract. Trusts for sale have existed substantially as they do now for a long time. The only alteration in the practice now is that many powers which formerly were expressly given in the settlement are now implied under statute. That, no doubt, has the effect of making settlements shorter, but there are disadvantages in it.

(3) The third case of overreaching is where a sale is made by a mortgagee or personal representative and the equitable interest or power is capable of being overreached by the conveyance. I have never been able to understand why a sole personal representative should be able to receive and give a good discharge for the purchase money on a sale, whilst a sole trustee cannot do so. I do not know why a personal representative should be regarded as more trustworthy than a trustee.

(4) The fourth case is where a sale is made under an order of the court.

There are, however, exceptions to be found in sub-s. (3). Those shortly are—

(i) Equitable interests protected by a deposit of documents relating to the legal estate affected.

(ii) The benefit of a restrictive covenant.

(iii) Equitable easements.

(iv) The benefit of any contract to convey or create a legal estate.

(v) Equitable interests protected by registration under the L.C.A., 1925.

Such interests cannot be overreached. The rights of a person entitled to an equitable charge are preserved by sub-s. (4).

Landlord and Tenant Notebook.

Sub-tenant Farmers.

The Agricultural Holdings Act, 1923, contains little or nothing that is calculated directly to discourage sub-letting. I think the only provision which deals with the matter specifically is that of s. 25 (2) (*d*). The section as a whole is one of those which provide for security of tenure, enacting that (notwithstanding any provision in a contract of tenancy to the contrary) a notice to quit purporting to terminate the tenancy before the expiration from the end of the current year of the tenancy shall be void. By sub-s. (2) (*d*) any notice given by a tenant to a sub-tenant is excluded from this provision. The reason is obvious, and it is perhaps worth noting that the clause does not extend to notices to quit given *by* sub-tenants; for it was held, in *Flather* v. *Hood* (1928), 44 T.L.R. 698, that under the main

provisions of the section landlords are entitled to a twelve months' notice as well as tenants.

Apart from this, a sub-tenant is, in theory, in the same position as one who holds direct of the freeholder. He answers to the definition of "tenant" in s. 57, the interpretation section: a holder of land under a contract of tenancy, including any person who derives title from a tenant; and a mesne lessor is within the definition of "landlord," namely, any person entitled to receive the rents and profits of any land.

But it must be remembered that the objects of this legislation are twofold: the tenant farmer is given not only a measure of security of tenure, but is to be entitled to certain rewards if he adds to the value of the freehold by effecting improvements or by adopting a better system or standard of farming than is common; and the rewards in question do not become due till the tenancy expires. Consequently it is of importance to the tenant that the landlord should then be a man of substance, and this is more likely to be the case if the reversion be a freehold reversion than if the landlord be himself tenant of the land. Moreover, as has been pointed out, a mesne tenant can himself claim against a superior landlord for improvements, etc., effected by a sub-tenant, and, having pocketed the compensation, he may emigrate to Peru.

I do not suggest that Parliament is to be blamed for not providing against such a contingency. Our Legislature, soon after the first of the Agricultural Holdings Acts, that of 1878, had proved a fiasco because every lease and agreement was found to exclude it, introduced the principle of prohibiting contracting out by the 1883 statute. If the bargaining capacity of the farmer is less than that of the landowner, this is what one expects Parliament to do. But the principle hardly extends to prohibiting sub-letting, and there is, of course, the consideration that sub-letting, at all events of the whole of the demised premises, has never been common in the world of agriculture. Farms have certainly not the appeal to the speculator that is possessed by, say, London theatres.

Sub-letting of some small unwanted portion of a holding to a "little man" who wants it for some specific purpose is more usual. When that purpose is the feeding of livestock, certain provisions of the Act as to distress merit the attention of the stockowner's advisers. Section 35 provides that where livestock belonging to another person has been taken in by the tenant of a holding to be fed at a fair price, the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and, if so distrained, etc., there shall not be recovered by the distrainor a sum exceeding the amount of the price agreed to be paid for the feeding or any part thereof which remains unpaid. And the owner of the stock may redeem them before sale by paying the landlord what he owes the tenant, his debt to the latter being thereby discharged. Now this section does not mention the word "agistment," but it is clear that that is what it contemplates. And agreements between stockowners and farmers are frequently such that it is not easy to say whether a contract of agistment or tenancy has been concluded. This is illustrated by the cases of *Masters* v. *Green* (1888), 20 Q.B.D. 807, and *Richards* v. *Davies* [1921] 1 Ch. 90. The former, brought under the corresponding section of the old Agricultural Holdings Act, 1883, was an action by the owner of cattle against a distraining landlord. The plaintiff, who thought he answered to the description of one to whom livestock belonged which had been taken in by the tenant to be fed at a fair price, was found to have had conferred upon him "the exclusive right to feed the grass on the land for four weeks." Accordingly he was held to be sub-tenant. On the strength of which decision the plaintiff in *Richards* v. *Davies*, landlord of a holding let under an agreement with covenants against underletting, successfully proceeded against his tenant who had advertised that he would "let the grass keep."

Of course, an undertenant in the position of the plaintiff in *Masters* v. *Green* nowadays could invoke the Law of Distress Amendment Act, 1908; but certain differences between the scope of and procedure under the two statutes may be of importance in these cases. As regards procedure, he who claims protection under the Law of Distress Amendment Act must go through the business of executing and serving a declaration in writing, containing particulars of rent payable and rent due, with an undertaking to pay to the distrainor, and with a signed inventory describing the goods claimed. As regards scope, on the one hand the party to a contract of agistment, unlike the sub-tenant, need not trouble at all if there be other distress available on the premises demised by the head lease; on the other hand, the sub-tenant must remember that among the articles excluded from the protection of the Law of Distress Amendment Act are articles in the possession, order or disposition of the tenant by the consent and permission of the true owner under such circumstances that the tenant is their reputed owner.

Our County Court Letter.

THE CUSTODY OF HEIRLOOMS.

In *Hewlett* v. *Burrows*, recently heard at Cheltenham County Court, the claim was for the return of a newspaper (dated the 23rd June, 1815), or, alternatively, for £9 15s. as damages. The plaintiff's case was that (1) an ancestor of hers had fought at Waterloo, and the battle was reported in the above newspaper, which the plaintiff had lent to her daughter; (2) the latter, having married the defendant in 1930, had died in 1932, and the plaintiff had asked for the newspaper, but the defendant had failed to carry out his promise to return it. His Honour Judge Kennedy, K.C., made an order for the return of the newspaper within ten days (the case having already been adjourned from the previous month) and—in the event of non-compliance—the case was further adjourned for evidence of value.

SOLICITORS' RIGHTS AND LIABILITIES.

In the recent case of *Newill* v. *Stokes*, at Wellington County Court, the claim was for £13 13s. 6d. as money expended as solicitor, and the counter-claim was for £97 as damages for negligence. The plaintiff's case was that (1) the defendant, having bought some land from one Woodgates, had sued some timber fellers (Thomas & Co.) for wrongfully removing growing timber, but their defence had been that Woodgate had sold the land without title; (2) on Woodgate being added as co-plaintiff, however, Thomas & Co. had paid £25 into court, and the action was withdrawn on the terms endorsed on counsel's briefs. The defendant contended that the timber case had been mishandled (as it should have been settled by arbitration) but he admitted that he and Thomas & Co. had been unable to agree upon an arbitrator, with the result that the case came into court. His Honour Judge Samuel, K.C., observed that the documents showed why the arbitration never took place, viz., the defendant refused to have an arbitrator living within six miles of Oswestry or Welshpool, while the other side refused to have any of the six arbitrators suggested (on behalf of the defendant) by the plaintiff. The allegation of negligence ought never to have been made, and judgment was given for the plaintiff, with costs, the counter-claim being dismissed.

PURCHASE OF GREYHOUND BY TRAINER.

In *Hall* v. *Wybrow*, recently heard at Burton-on-Trent County Court, the claim was for £31 10s. as the price of a greyhound, and the counter-claim was for the keep of the animal at 12s. 6d. a week. The plaintiff's case was that (1) she had bred greyhounds since 1927, and (in November, 1933) the defendant visited her kennels and inspected a litter of nine puppies; (2) the latter had been withdrawn from a sale (in anticipation of his visit) and he took one (a brindle) in spite

of alleged defects in its feet; (3) the puppy was subsequently returned, as it was no good for the track. The defendant's case was that (*a*) as a trainer, he was prohibited (by the rules of the Greyhound Racing Association) from owning dogs, and he had merely told the plaintiff that if the puppies would go round the track he might find a buyer; (*b*) in answer to his question as to the price, the plaintiff had said "thirty guineas. You can make anything you like over that"; (*c*) having found an owner, the defendant took one of the plaintiff's puppies on approval, but it took no interest in the mechanical hare; (*d*) there was no acceptance within the Sale of Goods Act, 1893, s. 4 (1). His Honour Judge Longson held that nothing was said with regard to training or trying the hounds, and judgment was therefore given for the plaintiff, with costs, the counter-claim being dismissed.

Reviews.

Voluntary Liquidation, with Appendix of Forms. By H. M. SHURLOCK, of Lincoln's Inn, Barrister-at-Law. 1934. Demy 8vo. pp. xvi and (with Index) 192. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 12s. 6d. net.

The main object of this useful volume is to show in a practical form the procedure to be adopted in both types of winding up, distinguished as members' winding up when a company is solvent, and creditors' winding up when a company is insolvent. The Companies Act, 1929, made material alterations in the manner and method of voluntary winding up. To achieve his object, the learned author has divided his book into four parts. Part I deals with matters generally relating to a voluntary winding up; Part II outlines the procedure with an explanation of such procedure in a members' winding up; Part III outlines the procedure to be adopted with an explanation of such procedure in a creditors' winding up; and Part IV deals with matters that may occur in the course of both forms of winding up. The Tables of Procedure in Parts II and III are set out in the order in which the steps to be taken in winding up would normally arise. Apart from the exposition of the subject generally thus outlined, the volume contains references to numerous miscellaneous matters arising in practice, and altogether forms a compact and convenient guide to all to whom the carrying out of a liquidation is entrusted.

Books Received.

The Death Duties. By ROBERT DYMOND, of the Estate Duty Office, Somerset House, Solicitor (Honours). Seventh Edition, 1934. Demy 8vo. pp. lvi and (with Index) 736. London, Liverpool, Birmingham and Glasgow: The Solicitors' Law Stationery Society, Ltd. 30s. net.

The Complete Law of Housing. By H. A. HILL, of Gray's Inn, Barrister-at-Law. Second Edition, 1934. Royal 8vo. pp. xxxix and (with Index) 584. London: Butterworth and Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 25s. net.

Local Government Law and Legislation for 1933. Edited by W. H. DUMSDAY, of Gray's Inn, Barrister-at-Law. 1934. Demy 8vo. pp. xvi and (with Index) 873. London: Hadden, Best & Co., Ltd. Price (complete with supplement *The Local Government Act*, 1933) £3 8s. 6d.

The Local Government Act, 1933. By ALFRED R. TAYLOUR, M.A., of Lincoln's Inn, Barrister-at-Law, and JOHN MOSS, of Gray's Inn, Barrister-at-Law. 1934. Demy 8vo. pp. xciv and (with Index) 940. London: Hadden, Best & Co., Ltd. Issued as a supplement to *Local Government Law and Legislation for* 1933.

Obituary.

MR. W. D. THURNAM.

Mr. Walter Digby Thurnam, Barrister-at-Law, died at his home at Highbury on Friday, 7th September, at the age of eighty. Educated at Marlborough, he was admitted a solicitor in 1880, and practised at Liverpool. He was called to the Bar by Lincoln's Inn in 1893, and practised in the Chancery Court and the Ecclesiastical Court. He became a reporter for ecclesiastical cases in *The Law Reports* in 1924, but retired in 1927 owing to ill-health.

MR. J. ASHFORD.

Mr. John Ashford, solicitor, of Ivybridge, Devon, died at Ugborough on Wednesday, 5th September, in his seventy-fourth year. Educated at Sherborne, he served his articles with Messrs. Whiteford and Bennett, of Plymouth, and was admitted a solicitor in 1884. He practised at Plymouth and Ivybridge for over forty years, and was clerk to the Ivybridge Urban Council.

MR. H. L. EVANS.

Mr. Horace Lavington Evans, solicitor, of Bristol and Clifton, died recently. He was educated at Trinity College, Cambridge, and was admitted a solicitor in 1894. He was a past-president of the Bristol Incorporated Law Society and he had also been president of the Commercial Rooms. He served on the committees of the Peter Herve Benevolent Institution and the Bristol Kyrle Society, and was treasurer of Broad Plain Settlement for some years. He was honorary secretary of Clifton Rugby Football Club in 1879-80.

MR. B. E. PEMBERTON.

Mr. Busick Edmonds Pemberton, retired solicitor, of Chalfont St. Giles, died at Droitwich, on Tuesday, 11th September, in his eighty-fourth year. Mr. Pemberton was for many years a member of the firm of Messrs. Lee and Pemberton, of Lincoln's Inn Fields. He was head of the firm from 1905 until his retirement in 1914.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Registration of Land Charge.

Sir,—Prior to 1926 the question of death duties affecting a purchaser of land was satisfactorily dealt with by the vendor's solicitor producing a certificate under s. 11 of the Finance Act, 1894, specifying the particular property. Now, by s. 17 of the Law of Property Act, 1925, a purchaser of a legal estate takes free from any charge for death duties unless a land charge has been registered by the Estate Duty Office.

Do any of your readers know of a case where the Estate Duty Office have registered a land charge?

Will the land charge be registered in the name of the deceased or his personal representatives?

We can never obtain a satisfactory reply to a requisition as to estate duty, being always told to search. What would be the position if by accident the particular property was not included in the affidavit for inland revenue. The Estate Duty Office could not register a land charge as they would not know of the property. Is a purchaser under those circumstances still safe if he searches at the last minute before completing?

Another matter about which there is uncertainty is as to whether it is necessary for trustees under a will to execute an assent as personal representatives to themselves as trustees. We have seen counsel's opinions both ways, and the precedent books are not very helpful.

5th September. W.H.L.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Enforceability of Demolition Order.

Q. 3038. A demolition order was made by a local authority under s. 19 (1) of the Housing Act of 1930. Owing to some mistake or oversight, no appeal from this demolition order was made under s. 22 within the twenty-one days limited by that section by the owner of the cottage in question, or by his mortgagees, and in fact no appeal has been entered at all. As a consequence the demolition order has become operative under s. 21 (1). The owner and mortgagees of the cottage have now put forward a scheme for reconstruction and an application for a grant towards the reconstruction under the Housing Rural Workers Act; the local authority favour the application, but are advised that, as the demolition order has become operative in view of the imperative wording of s. 21 (1), the demolition order cannot be withdrawn, and the provisions of that section must be enforced. They refer to *Lancaster* v. *Burnley Corporation* [1915] K.B. 181, 84 L.J., a decision under the Housing Act of 1909.

(1) Can the local authority rescind their demolition order in order to permit of a reconstruction scheme?

(2) Failing this, can the local authority and/or the county court judge waive the twenty-one days within which notice of appeal to the county court should have been given, in order that the county court judge may review the circumstances and annul the demolition order if the facts warrant his doing so?

A. The advice given to the local authority—based upon the imperative wording of the Housing Act, 1930, s. 21 (1)—is correct.

(1) The local authority have no jurisdiction to rescind the order.

(2) The local authority can waive the requirement of twenty-one days, as the period within which notice of appeal should have been given. The county court judge, however, may consider that his jurisdiction lapsed (after the expiration of twenty-one days) and that there is now no means of restoring such jurisdiction. It should be pointed out, however, that the provision as to twenty-one days is merely directory. The position is therefore analogous to that under the County Courts Act, 1888, s. 93, and the County Court Rules, Ord. XXXI, r. 1. The latter specifies twelve days as the period within which an application must be made for a new trial, but the judge may nevertheless entertain such application (in his discretion) even after the expiration of twelve days. See *Carter* v. *Smith* (1856), Q.B. 141, 24 L.J.; 4 E. & B. 696.

Distress after Judgment.

Q. 3039. An order for possession of a house is made by the county court judge. The house is controlled as to part and decontrolled (owing to furnished sub-lettings) as to the remainder. Rent was paid to date of expiration of notice to quit. The summons claimed mesne profits from the date of the expiration of the notice. The judgment is merely a direction for possession of the whole house by a certain date. Can the landlord now levy a distress for the rent due and to become due up to the possession date? Owing to the proceedings there are several weeks to date due and more will arise. Or has the order for possession put an end to the relationship between landlord and tenant so as to make a distress not possible. Is the correct view the one that at the end of the tenancy the landlord must sue the tenant for use and occupation, and that meanwhile he has no remedy if the tenant does not pay?

A. The argument that the right of distress is lost after judgment is based on the contention that the debt is merged in the judgment. In the present case, however, the judgment does not order the payment of arrears of rent, and there is no merger. In any case, it is not settled that a judgment takes away a right of distress, as the judgment (being only a security for the original cause of action) cannot operate to remove any collateral remedy—until satisfied. The matter is discussed in "The Law of Distress" (by J. B. Richardson, published by Ernest Benn, Ltd.), at p. 106. The view set out in the last paragraph of the question cannot therefore be accepted as correct, although it has found some support. On the facts of the present case, the opinion is given that the right of distress still exists.

Pre-1926 Will—Power to Executors to Sell during Life of Wife—Direction to Dispose of Property after his Death.

Q. 3040. Testator died 11th November, 1918. By his will he appointed his wife A and his brother-in-law B "to be my executors to receive all moneys due to me and to pay all debts owing by me at my decease," and after making specific gifts and bequests he proceeded: "So far as my real estate is concerned in the event of my executors having a reasonable offer for all or any portion of it they are hereby empowered to sell. The proceeds to be invested and my wife shall receive the interest for her sole use during her life. If not sold she shall receive the rents after payment of rates, repairs, etc., in the same way. At her death any property not sold shall be disposed of and the proceeds" divided as therein mentioned. B renounced probate. A proved the will and carried on as the testator had done, and she died on 13th November, 1933. No vesting assent was made. A by her will appointed her sisters C and D to be the executrices and trustees of her will. Kindly give me your opinion on the following points: (1) Can C and D, the executrices and trustees of the will of A, sell the property? (2) If so, in what capacity would C and D sell?

A. It is clear that during A's lifetime the executors were only given a power of sale, and that after her death the direction to dispose of property was a binding one. "Trust for sale" in L.P.A., is defined as an immediate binding trust for sale, and "trustee for sale" as including personal representatives holding upon trust for sale. A was obviously tenant for life, and as the will came into force before 1926, the legal estate in fee simple vested in A by virtue of the transitory provisions without the execution of any vesting assent. Such legal estate is, therefore, now vested in C and D as personal representatives of A. Subject to them her will. As such personal representatives it would be their duty to vest the property in the personal representatives of the testator, upon the trust for sale contained in the will. As, however, A's personal representatives are also personal representatives of the testator, this appears to be an unnecessary formality. The present writer would simply ask for a conveyance from C and D as personal representatives of A, and also as personal representatives and trustees for sale under the will of the testator. The purchaser would get the legal estate and all the implied covenants he could possibly ask for.

To-day and Yesterday.

Legal Calendar.

10 September.—Robert Fitzneale died on the 10th September, 1198. Henry II owed to him the soundness of the financial administration of his reign and legal history owes to him the "Dialogus de Scaccario," the unique book which describes the working of the Exchequer and the administration of the law from the financial point of view. Scutage, distress, escheats and murder fines are all dealt with in relation to the sources of revenue. His connection with the law extended beyond the Exchequer, for in 1179 he was appointed a justice itinerant. In 1189, immediately after the accession of Richard I, he became Bishop of London.

11 September.—Sir Edward Philips, Master of the Rolls, died on the 11th September, 1614. His character as a judge earned high praise from the great Coke: "As for the Master of the Rolls, never man in England was more excellent in Chancery than that man; and for aught I heard (that had reason to hear something of him) I never heard him taxed with corruption, being a man of excellent dexterity, diligent, early in the morning, ready to do justice." Chief Justice Montagu admits him to have been "over swift in judging, but this was the error of his greater experience and riper judgment than others had."

12 September.—On the 12th September, 1806, Lord Thurlow, formerly Lord Chancellor, died at Brighton. He was buried in the Temple Church.

13 September.—On the 13th September, 1793, the Reverend Thomas Fyshe Palmer was found guilty at Perth of sedition. At a meeting of a Society of the Friends of Liberty he had circulated "a manuscript or writing of a wicked and seditious import in the form of an Address to their Fellow Citizens." The prisoner protested that he had simply acted in the belief that Parliamentary reform would "enhance the happiness of millions and establish the security of the Empire." Lords Eskgrove and Abercromby sentenced him to seven years' transportation. He was sent to New South Wales.

14 September.—On the 14th September, 1773, Major-General Gansel was tried at the Old Bailey for firing a case of pistols at three bailiffs who had attempted to arrest him for a debt at his lodgings in Craven Street, Strand. They had forced their way into his room, and, in the course of his struggle to keep the door closed, shots had certainly been fired, but he protested that his privileges had been violently infringed and that he had only acted in his own defence. After a careful summing up by Mr. Justice Nares the jury brought in a verdict of not guilty.

15 September.—On the 15th September, 1923, the French wife of Prince Fahmy Bey was acquitted at the Old Bailey of his murder. "When the jury came back and the foreman announced that the prisoner was not guilty of murder, there was such a storm of cheering that the court was cleared by order of the judge . . . She was quite overcome by emotion, and covered her face in her hands, and Marshall Hall, understanding completely, quietly slipped out of court without speaking to her . . . After his speech he was sweating all over his body to such an extent that before he left the Old Bailey he made a complete change of clothing."

16 September.—Sir John Leach, Master of the Rolls, died on the 16th September, 1834. He was buried at Edinburgh. Towards the end of his life, he had suffered from diseases which necessitated painful operations, borne with the utmost courage. He never allowed illness to interfere with his judicial duties, nor did he neglect the social activities which aristocratic friendships brought him. Thus gaiety and fatigue combined to shorten his life.

The Week's Personality.

"I'm shot if I don't believe I'm dying." These were the last words of Lord Thurlow. While living in retirement at Brighthelmstone, he had suddenly been seized with illness in his seventy-sixth year. Even in his last hours, his lifelong habit of swearing prevailed, and when his servants, carrying him upstairs to his bedroom, happened to let his legs strike against the banisters, he uttered an imprecation on "all their souls." He died in two days and was buried in the Temple Church, attended to the grave by the whole legal profession. It was as a judge that he appeared in the best light, for he always wished to decide fairly, but his constitutional impatience prevented him from giving counsel a fair hearing, and his judgments were hasty. As Speaker of the House of Lords, he was domineering and insincere. In the Cabinet "he opposed everything, proposed nothing and was ready to support anything." Thus, though it was said that Nature seemed "to have given him a head of crystal and nerves of brass," his capabilities were in effect squandered. One critic declared that "Thurlow's unrivalled excellence is an iron countenance, an inflexible hardihood of feature, an invulnerable impenetrable aspect that nothing can abash, no crimson tinge."

The Cancelled "Execution."

The cancelling of the execution scene in the Baildon Historical Pageant has apparently caused grave disappointment to the man who was to have been "hanged." Though the honorary solicitor of the pageant committee hinted at the dangers of a fatal accident and a trial for manslaughter, the confidence of the victim designate that he could survive a moderate suspension had support in several authentic instances of similar tenacity to life under the pre-"drop" system. In 1740 a man called Duel was hanged and taken to Surgeons Hall for dissection by the anatomists. He was already stripped and laid on the board when someone noticed that he was still alive. The surgeons bled him and in a couple of hours he came to and sat up in a chair groaning very much, but unable to speak. However, he was not safe from a second experience of the gallows, since the sentence on him had been that he should be hanged by the neck until he was dead, but the law was not so harsh as to exact this toll. Nevertheless, though he declared that while he was unconscious he dreamt of Paradise where an angel came to him and told him that his sins were forgiven, the authorities deemed it best to leave pardon to the heavenly powers, and at the next sessions he was sentenced to transportation for life.

Old Hangings.

The possibility of surviving hanging was the subject of several experiments about this time. In 1733 a surgeon named Chovet having found by experiments on dogs "that opening the windpipe will prevent the fatal consequences of the halter," tried this method on a man hanged at Tyburn. After a suspension of three-quarters of an hour he was still alive, though he died after being taken down. However, it was on no such surgical system that the brave man of the Baildon Pageant intended to rely, but simply on the strength of his neck muscles. Besides the objections on the ground of danger, it was urged by some that the spectacle would be gruesome, though others argued that it would be salutary as showing that death is the punishment to the murderer. The latter view has never been better put than in Dr. Johnson's famous dictum: "Sir, executions are intended to draw spectators; if they do not draw spectators, they do not answer their purpose. The old method was most satisfactory to all parties. The public was gratified by a procession and the criminal was supported by it." This was when Tyburn was abolished and executions began to be held at Newgate, in 1783. It was not till 1868 that the last public execution, that of the Fenian Michael Barratt, took place in front of

Newgate—a dramatic occasion, for the scare of an Irish rebellion caused extraordinary measures of precaution to be taken by the police, while near-by, but in the background, troops were in readiness for an outbreak.

Notes of Cases.

High Court—Chancery Division.

In Re **Russo-Asiatic Bank.**

In re **Russian Bank for Foreign Trade.**

Eve, J. 23rd July, 1934.

COMPANY—WINDING-UP—FOREIGN BANK WITH LONDON BRANCH—ACTION ON BILLS OF EXCHANGE—DRAWN BY COMPANY ABROAD—ACCEPTED BY LONDON BANKS—ACCEPTANCES ASSIGNED TO BANK OF ENGLAND—DISSOLUTION OF COMPANY ABROAD—PROOF BY BANK OF ENGLAND IN LIQUIDATION — LOCALITY OF DEBT — STATUTE OF LIMITATIONS.

These two applications by summons, heard together, were by the Attorney-General asking that decisions of the liquidators of the two banks which had been ordered to be wound up as unregistered companies under s. 338 of the Companies Act, 1929, rejecting proofs of debt by the Bank of England on behalf of the Crown for £752,000 and £920,000 might be reversed, and that the proofs might be allowed in full. The Russo-Asiatic Bank was established in Russia in 1895, opened a London branch in 1908, and was ordered to be wound up by the court in December, 1926. In October, 1915, an arrangement was made by the Bank of England with the authority of the Treasury and embodied in a memorandum under which approved Russian banks were to draw three months sterling bills and remit them through the Banque de l'Etat, Petrograd, to London for acceptance by certain banks and accepting houses, who agreed to renew the bills until one year after the termination of the war, the Banque de l'Etat undertaking to place the said houses in funds to meet the acceptances on maturity. All such bills were to be advised to the Bank of England, and Imperial Russian Treasury bills to the amount of the acceptances were to be lodged with the Bank of England as collateral security. In pursuance of this arrangement the Russo-Asiatic Bank drew bills of exchange on accepting houses, and in January, 1918, shortly before maturity, all the acceptances were assigned to the Bank of England in consideration of the issue of Exchequer Bonds to the accepting houses. The liquidator rejected the proof of the Bank of England on several grounds, the most important being that the claim was barred by the Statute of Limitations. The facts in the other case of the Russian Bank for Foreign Trade were similar.

EVE, J.: On the contention that the debt was located in Russia and that the liability of the drawers of the bills was governed by Russian law, which had by its operation discharged the liability or vested it in the Russian State, the construction of the contract showed that it was one creating an obligation to pay sterling in London on maturity, and therefore the law to be applied was English and not Russian law. On the evidence of experts and documents and all relevant authorities in similar cases the conclusion must be that by virtue of the decree of the Soviet Government the respondent bank ceased to have any corporate existence on or before 26th January, 1918, a date before the bills matured, after which there was no debtor who could be sued. The Statute of Limitations, therefore, had no application, and the Bank of England was entitled to be admitted to prove in the winding-up of the respondent bank. A similar order would be made in the other case of the Russian Bank for Foreign Trade, the applicant being entitled to prove for £920,000.

COUNSEL: *Sir Thomas Inskip*, A.-G., *Wilfrid Lewis* and *Andrewes-Uthwatt*; *Lionel Cohen*, K.C., and *V. R. Idelson*; *Van den Berg*, K.C., and *H. S. G. Buckmaster*.

SOLICITORS: *The Treasury Solicitor*; *Gilbert Samuel & Co.*; *Herbert Oppenheimer, Nathan & Vandyk*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

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Rules and Orders.

THE ROAD TRAFFIC ACT, 1934 (DATE OF COMMENCEMENT) ORDER (NO. 1), 1934, DATED AUGUST 14, 1934, MADE BY THE MINISTER OF TRANSPORT.

Whereas by Sub-section (3) of Section 42 of the Road Traffic Act, 1934,(*) hereinafter called "the Act," it is enacted that the Act shall come into operation on such day or days as the Minister of Transport may appoint, and the Minister may fix different days for different purposes and different provisions of the Act.

Now, therefore, the Minister of Transport in the exercise of the powers so conferred upon him and of all other powers enabling him in that behalf hereby appoints and orders as follows:—

1. The provisions of the Act specified in the First Column of the Schedule hereto shall come into operation for the purposes specified in the Second Column thereof on the eighteenth day of August, 1934.

2. The Interpretation Act, 1889,(†) applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

3. This Order may be cited as "The Road Traffic Act, 1934 (Date of Commencement) Order (No. 1), 1934."

* 24–5 G. 5. c. 50. † 52–3 V. c. 63.

The Schedule.

Provisions of the Act.	Purposes for which provisions are to be brought into operation.
Part I.	
Section 9	For all purposes.
Part III.	
Section 18	For all purposes.
Part IV.	
Sub-section (1) of Section 25	For the purpose of making regulations.
Section 31	For the purpose of making regulations and enabling applications for licences to be made, and licences to be granted, and tests to be carried out.
Part V.	
Section 38 and the Second Schedule	For all purposes.
Section 40 and the Third Schedule	For all purposes except for the amendment of Sub-section (1) of Section 80 of the Principal Act and Section 36 of the Road and Rail Traffic Act, 1933.
Section 41	For all purposes except for the repeal of Section 49 of the Lanarkshire County Council Order, 1925.
Section 42	For all purposes.

Given under the Seal of the Minister of Transport this Fourteenth day of August, 1934.

(L.S.) 7355 W.D.D.

Robert H. Tolerton, An Assistant Secretary.

Legal Notes and News.

Honours and Appointments.

Mr. R. A. CORSCADDEN, solicitor, Ballymoney, Co. Antrim, has been appointed Clerk of the Crown and Peace for Belfast and Co. Antrim, in succession to Mr. Martin Burke, who died six months ago. Mr. Corscadden was formerly Crown Solicitor for Co. Leitrim.

Wills and Bequests.

Mr. Norman Clinton, solicitor, of Aldershot, left £10,273, with net personalty nil.

Mr. Harry William Hughes, of Shrewsbury, solicitor, clerk to justices for Shrewsbury and for the Pontesbury Division of Shropshire, left £20,598, with net personalty £15,866.

THE CANADIAN BAR ASSOCIATION.

The annual meeting of the Canadian Bar Association concluded on Friday, 7th September, says *The Times*, with the election of Mr. Isaac Pitblado, K.C., of Winnipeg, as president for the coming year.

The speakers during the meeting included Lord Tomlin, Me. Olivier Jallu (France), Professor Xavier Janne (Belgium), Signor Salvatore Galgano (Italy), and Sir Robert Borden, who defended the Judicial Committee of the Privy Council as one of the most valuable institutions in the Empire.

NEW JUDGE AT ILFORD COUNTY COURT.

Judge Beazley, who has succeeded Judge Crawford, took his seat for the first time in the new Ilford County Court, last Tuesday, says *The Times*. He was welcomed by the Mayor and Corporation of Ilford. Judge Beazley said that he succeeded Judge Crawford, a great County Court judge who never spared himself in the work of a very heavy court. He would do his utmost to conduct the work of the court to the satisfaction of the public so that in time he might be considered worthy to succeed Judge Crawford.

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 27th September, 1934.

	Div. Months.	Middle Price 12 Sept. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	113	3 10 10	3 3 4
Consols 2½%	JAJO	80¼	3 2 3	—
War Loan 3½% 1952 or after	JD	104⅞	3 6 9	3 2 10
Funding 4% Loan 1960-90	MN	116	3 9 0	3 1 10
Funding 3% Loan 1959-69	AO	99⅝	3 0 3	3 0 4
Victory 4% Loan Av. life 29 years	MS	112½	3 11 1	3 6 6
Conversion 5% Loan 1944-64	MN	119⅛	4 3 8	2 10 11
Conversion 4½% Loan 1940-44	JJ	111¼	4 0 11	2 9 2
Conversion 3½% Loan 1961 or after	AO	103¾	3 7 6	3 5 9
Conversion 3% Loan 1948-53	MS	101⅛	2 18 11	2 16 10
Conversion 2½% Loan 1944-49	AO	97½	2 11 6	2 14 9
Local Loans 3% Stock 1912 or after	JAJO	92¾	3 4 8	—
Bank Stock	AO	371½	3 4 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	84½	3 5 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	92	3 5 3	—
India 4½% 1950-55	MN	112½	4 0 0	3 9 5
India 3½% 1931 or after	JAJO	94	3 14 6	—
India 3% 1948 or after	JAJO	81	3 14 1	—
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3 17 7	3 11 4
Sudan 4% 1974 Red. in part after 1950	MN	110	3 12 9	3 3 10
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	3 0 9
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102⅔	2 18 6	2 15 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 19 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 13 2
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	100	3 15 0	3 15 0
Canada 4% 1953-58	MS	108	3 14 1	3 8 4
Natal 3% 1929-49	JJ	98	3 1 3	3 3 5
New South Wales 3½% 1930-50	JJ	97	3 12 2	3 15 0
New Zealand 3% 1945	AO	98	3 1 3	3 4 5
Nigeria 4% 1963	AO	110	3 12 9	3 8 11
Queensland 3½% 1950-70	JJ	98	3 11 5	3 12 0
South Africa 3½% 1953-73	JD	104	3 7 4	3 4 3
Victoria 3½% 1929-49	AO	97	3 12 2	3 15 3
W. Australia 3½% 1935-55	AO	97	3 12 2	3 14 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	92	3 5 3	—
Croydon 3% 1940-60	AO	98	3 1 3	3 2 3
Essex County 3½% 1952-72	JD	105	3 6 8	3 2 8
*Hull 3½% 1925-55	FA	102	3 8 8	—
Leeds 3% 1927 or after	JJ	91	3 5 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3 8 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	78⅝	3 3 8	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	92	3 5 3	—
Manchester 3% 1941 or after	FA	91	3 5 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	97	2 11 7	2 15 0
Metropolitan Water Board 3% "A" 1963-2003	AO	93	3 4 6	3 5 1
Do. do. 3% "B" 1934-2003	MS	94	3 3 10	3 4 5
Do. do. 3% "E" 1953-73	JJ	98	3 1 3	3 1 10
Middlesex County Council 4% 1952-72	MN	112	3 11 5	3 2 4
‡ Do. do. 4½% 1950-70	MN	115	3 18 3	3 5 7
Nottingham 3% Irredeemable	MN	92	3 5 3	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 6 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	130	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	128½	3 17 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126½	3 19 1	—
Gt. Western Rly. 5% Preference	MA	112½	4 8 11	—
Southern Rly. 4% Debenture	JJ	109	3 13 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	109½	3 13 1	3 9 4
Southern Rly. 5% Guaranteed	MA	124½	4 0 4	—
Southern Rly. 5% Preference	MA	112½	4 8 11	—

*Not available to Trustees over par. ‡Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

LEGACIES.

THE suggestions of the legal adviser have great weight with most testators, and an appeal is made for the claims of ST. DUNSTAN'S to be borne in mind when charitable bequests are under consideration. St. Dunstan's is solely responsible for the training, settlement and lifelong after-care of over two thousand men who have been blinded as the result of their service for King and Country.

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Solicitor—Sidney F. Rich, Esq., Bank-chambers, 211, Streatham High-road, S.W.16.

FOR OCCUPATION.

CLAPHAM.—Freehold shop premises, 249, CLAPHAM-ROAD, comprising shop, basement, offices, four rooms, kitchen and bath room.

Solicitors—Messrs. Badham, Comins & Sloman, 3, Salters Hall-court, Cannon-street, E.C.4.

AT A LOW RESERVE.

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Solicitors—Messrs. Caporn & Campbell, St. Bride's House, Salisbury-square, E.C.4.

BY ORDER OF THE EXECUTORS.

FREEHOLDS.

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LEASEHOLDS.

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Particulars may be otained of the respective Solicitors, or from the Auctioneers' Offices.

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